

SEP 14 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KAREN LAMANTIA,

Plaintiff - Appellant,

v.

HEWLETT-PACKARD COMPANY
EMPLOYEE BENEFITS
ORGANIZATION INCOME
PROTECTION PLAN,

Defendant - Appellee.

No. 05-16744

D.C. No. CV-01-01933-LKK

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, Senior Judge, Presiding

Argued and Submitted August 16, 2006
San Francisco, California

Before: CANBY, THOMPSON, and HAWKINS, Circuit Judges.

Karen LaMantia (“LaMantia”) appeals the district court’s summary judgment for the defendant. Under the relevant disability-benefits plan (“the Plan”), an independent claims administrator, Voluntary Plan Administrator (“VPA”), determines

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

whether a claimant qualifies for benefits. LaMantia seeks review of VPA's denial of her petition for long-term benefits, asserting that this denial was an abuse of the VPA's discretion.

Abatie v. Alta Health & Life Insurance Co., No. 03-55601 (9th Cir. Aug. 15, 2006), filed the day before argument in this appeal, fundamentally changed how we review administrator determinations under the Employee Retirement Security Act, 29 U.S.C. §§ 1001–1461. *Abatie* states that abuse-of-discretion review is merited, in almost all cases, when the plan confers sufficient discretion to the plan administrator. No. 03-55601, slip op. at 9636-37. This court has held that the Plan sufficiently vests such discretion. *LaMantia v. Voluntary Plan Adm'rs, Inc.*, 401 F.3d 1114, 1123 (9th Cir. 2005). But *Abatie* also changed how courts are to apply the abuse-of-discretion standard, including (1) eliminating the need for plaintiffs to produce evidence of a serious conflict, *id.* at 9644; (2) allowing courts to “tailor the review” after weighing “all the facts and circumstances” that might indicate a conflict of interest, *id.* at 9646, 9648; and (3) allowing the court to weigh facts and circumstances outside of the administrative record, *id.* at 9650. Because *Abatie* creates such a significant shift in analysis and because of the district court's ability to conduct fact finding beyond the administrative record, the district court should apply *Abatie* in the first instance.

Remanded to the district court for proceedings consistent with this disposition.

REMANDED.¹

¹ This appeal was heard at the same time and before the same panel as *Carter v. Hewlett Packard Co.*, No. 05-16231, and *Wright v. Hewlett-Packard Co. Employee Benefits Organization Income Protection Plan*, No. 04-16754. All three appeals have been remanded to district court for application of *Abatie*.